



# PUBLIC NOTICE

**Federal Communications Commission**  
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**Washington, D.C. 20554**

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**DA 05-1961**  
**July 6, 2005**

## **DOMESTIC AUTHORIZATION GRANTED**

### **APPLICATION OF UNIVERSAL ACCESS, INC., DEBTOR-IN-POSSESSION AND VANCO DIRECT USA, LLC TO TRANSFER CONTROL OF UNIVERSAL ACCESS, INC., DEBTOR-IN- POSSESSION TO VANCO DIRECT USA, LLC**

**WC Docket No. 05-187**

#### **By the Chief, Wireline Competition Bureau:**

On April 25, 2005, Universal Access, Inc., Debtor-in-Possession ("UAI"), and Vanco Direct USA, LLC ("Vanco") (collectively, "Applicants") filed an application pursuant to sections 63.03 and 63.04 of the Commission's rules<sup>1</sup> requesting approval to transfer the control of UAI's domestic authorization to Vanco.<sup>2</sup> Vanco, a Delaware limited liability company, is a non-dominant carrier that provides interstate private line service throughout the United States. Vanco is 100% owned by VNO Direct Limited, a United Kingdom corporation. VNO Direct Limited is 100% owned by Vanco Group Limited, a United Kingdom corporation. Vanco Group Limited is 100% owned by Vanco PLC, a United Kingdom corporation, with a majority ownership interest currently held by Edward Allen Timpany, a United Kingdom citizen. No other individual or entity owns 10% or more of the voting shares in Vanco PLC.

Applicants request approval of the transfer of control pursuant to an asset purchase agreement (the "Agreement"). Under the Agreement, Vanco will acquire substantially all of the assets of UAI, including but not limited to UAI's customer accounts, subject to the approval of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court") in the matter entitled *In Re: Universal Access Global Holdings, Inc., et al.*, Case No. 04 B 28747 (Jointly Administered). A copy of the order of the Bankruptcy Court authorizing the sale will be filed with the Commission upon issuance. UAI is a wholly owned subsidiary of Universal Access Global Holdings, Inc. ("UAXS"). Since August of 2004, UAXS, UAI, and each of UAI's wholly owned domestic subsidiaries, have been operating under the protection of the Bankruptcy Court. The Agreement is still pending approval of the Bankruptcy Court.

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<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

<sup>2</sup> Applicants have also filed an application to transfer control of their International Section 214 authority. Any action on this domestic section 214 application is without prejudice to Commission action on other related applications.

The Commission released a public notice accepting this application for streamlined processing on May 18, 2005.<sup>3</sup> Subsequently, on June 1, 2005, the United States Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the United States Department of Homeland Security (collectively, the “Agencies”), filed with the Commission a request to defer action on this application until such time as the Agencies (i) notify the Commission that the potential national security, law enforcement, and public safety issues raised by the application have or have not been resolved, and (ii) on that basis, request appropriate action by the Commission.<sup>4</sup> On June 29, 2005, the Agencies filed a letter asking the Commission to withdraw the Agencies’ request to defer the application. The Agencies advised the Commission that they no longer object to the grant of the instant application based on the information provided to the Agencies by Vanco and analysis by the Agencies of potential national security, law enforcement and public safety issues.<sup>5</sup>

Consistent with Commission precedent, the Bureau accords the appropriate level of deference to the Executive Branch Agencies’ expertise on national security and law enforcement issues.<sup>6</sup> The Agencies have notified the Commission that they have no objection to the application.

The Wireline Competition Bureau finds, upon consideration of the record, that grant of the application will serve the public interest, convenience, and necessity.<sup>7</sup> Specifically, in accordance with the request of the Executive Branch Agencies, in the absence of any objection from the Applicants, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 0.291 of the Commission’s rules,<sup>8</sup> the Wireline Competition Bureau hereby grants this application.

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<sup>3</sup> *Domestic Section 214 Application Filed for Acquisition of Assets and Transfer of Control of Universal Access, Inc., Debtor-in-Possession, to Vanco Direct USA, LLC*, WC 05-187, Public Notice, DA 05-1372 (rel. May 18, 2005).

<sup>4</sup> *See Domestic Section 214 Application Filed for Acquisition of Assets and Transfer of Control of Universal Access, Inc., Debtor-in-Possession, to Vanco Direct, USA, LLC*, WC Docket No. 05-187, Request to Defer (filed Jun. 1, 2005).

<sup>5</sup> *See Request to Withdraw Request to Defer Domestic 214 Application Filed for Acquisition of Assets and Transfer of Control of Universal Access Inc., Debtor-in-Possession, to Vanco Direct USA, LLC*, WC Docket No. 05-187, DA 05-1372, Request to Withdraw (filed Jun. 29, 2005).

<sup>6</sup> The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. *See Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, ¶¶ 178-182 (1997) (“DISCO II Order”); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-921, ¶¶ 61-66 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000) (“Foreign Participation Order”). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. *See Foreign Participation Order*, 12 FCC Rcd at 23919-921, ¶¶ 61-66; *see also Applications of XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act, and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, IB Docket No. 02-50, Memorandum Opinion & Order, 17 FCC Rcd 19212, 19228-29, ¶¶ 36-40.

<sup>7</sup> *See* 47 C.F.R. § 63.03(c)(v). Upon consummation of the transaction, Vanco will have a market share in the U.S. interstate interexchange market of less than 10 percent, and will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier in the U.S. that is not a party to the transaction. In addition, no party to this transaction is dominant with respect to any domestic service.

<sup>8</sup> 47 C.F.R. § 0.291.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.<sup>9</sup> Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of the date of this Public Notice.<sup>10</sup>

For further information, please contact Erin Boone at (202) 418-0064, or Renee Crittendon at (202) 418-2352, Competition Policy Division, Wireline Competition Bureau.

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<sup>9</sup> See 47 C.F.R. § 1.103.

<sup>10</sup> See 47 C.F.R. §§ 1.106, 1.115.